

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Danny E. Schoenegge, JR.,

Case No. 3:07CV1331

Plaintiff

v.

ORDER

United States of America,

Defendant

This is a § 2255 case in which the petitioner, convicted following his plea of guilty to being a felon in possession of a firearm, claims that his attorney provided ineffective assistance at sentencing because he failed to investigate mitigating factors. Those factors, according to the petitioner, were his bipolar condition and other factors from his childhood which affected his decision to possess the firearm.

The record belies the factual basis on which the petitioner bases his § 2255 petition. Prior to sentencing the attorney submitted a sentencing memorandum in which he detailed the petitioner's bipolar condition and childhood circumstances [including sexual and physical abuse, witnessing his mother being beaten, and living in a gun- and violence-ridden environment].

The record also shows that the attorney renewed his plea in mitigation in open court at time of sentencing.

Thus, it is clear that the petitioner's attorney raised those contentions that the petitioner now claims were not raised.

I find, accordingly, nothing defective in the representation afforded to the petitioner by his attorney.

In any event, as the government argues, the petitioner has not shown that he was prejudiced. As noted at sentencing, he had failed to take his medication; a circumstance that was entirely within his control. His contentions about why he was carrying the weapon were neither plausible nor persuasive. Even if I had not been aware of his medical condition and the circumstances of his upbringing, I have no doubt that the sentence he received would have been the sentence I otherwise would have imposed.

In light of the foregoing, it is

ORDERED THAT the petition for relief under 28 U.S.C. § 2255 be, and the same hereby is denied.

An appeal from this decision could not be taken in good faith and should not be allowed without prepayment of the requisite filing fee.

So ordered.

s/James G. Carr
James G. Carr
Chief Judge